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HOUSE BILL 551

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Ron Godbey

AN ACT

RELATING TO CIVIL LAW; ENACTING THE DRUG TRAFFICKER LIABILITY ACT; PROVIDING FOR LEGAL ACTIONS BY CERTAIN PERSONS TO RECOVER DAMAGES FROM DRUG TRAFFICKERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the "Drug Trafficker Liability Act".

Section 2. DEFINITIONS.--As used in the Drug Trafficker Liability Act:

A. "controlled substance" means a "controlled substance", a "counterfeit substance" or a "controlled substance analog" as defined in Section 30-31-2 NMSA 1978;

B. "illegal user" means a person who acquires a controlled substance from a person who traffics in controlled substances;

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1 C. "traffic" means the illegal distribution, sale
2 or possession with the intent to distribute a controlled
3 substance; and

4 D. "trafficker" means a person who traffics.

5 Section 3. CAUSE OF ACTION--PRESUMPTION OF INJURY.--

6 A. A person other than an illegal user may recover
7 damages from a trafficker for an injury that is proximately
8 caused by an illegal user's use of a controlled substance.

9 B. An illegal user may recover damages from his
10 trafficker for an injury that is proximately caused by the
11 illegal user's use of a controlled substance if, prior to
12 filing the action, the illegal user discloses to a law
13 enforcement authority the identity of the trafficker.

14 C. A trafficker is presumed to have injured a
15 plaintiff and to have acted willfully and wantonly if the
16 plaintiff is:

17 (1) a parent, legal guardian, child, spouse
18 or sibling of an illegal user;

19 (2) a person whose mother was an illegal user
20 while the person was in utero;

21 (3) an illegal user's employer;

22 (4) a person who financially supports or
23 provides unreimbursed services to or on behalf of an illegal
24 user; or

25 (5) a neighbor who proves the trafficker's

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1 trafficking caused a decline in the value of the neighbor's
2 property in the neighborhood of an illegal user.

3 D. The cause of action established by the Drug
4 Trafficker Liability Act is in addition to and not in lieu of
5 any other cause of action available to a plaintiff.

6 Section 4. PRESUMPTIONS--EFFECT OF CRIMINAL DRUG
7 CONVICTION.--

8 A. If a person has been convicted of trafficking
9 in a controlled substance pursuant to Section 30-31-20 NMSA
10 1978, that person is presumed to have trafficked in a
11 controlled substance pursuant to the Drug Trafficker Liability
12 Act. This presumption is rebuttable.

13 B. A person convicted of violating the Controlled
14 Substances Act or the federal Comprehensive Drug Abuse
15 Prevention and Control Act of 1970 by trafficking in a
16 controlled substance to an illegal user is estopped from
17 denying trafficking in a controlled substance. The conviction
18 is also prima facie evidence of the person's trafficking in a
19 controlled substance during the two years preceding the date
20 of an act giving rise to the conviction.

21 C. The absence of a conviction of a person against
22 whom recovery is sought does not bar an action against that
23 person.

24 Section 5. DAMAGES--INSURANCE EXCLUSION.--

25 A. A person, other than an illegal user, who is

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1 entitled to a recovery pursuant to the Drug Trafficker
2 Liability Act may recover the following:

3 (1) economic or noneconomic and exemplary
4 damages;

5 (2) any pecuniary or nonpecuniary loss
6 proximately caused by an illegal user's use of a controlled
7 substance; and

8 (3) reasonable attorney fees and costs.

9 B. An illegal user entitled to recovery under the
10 Drug Trafficker Liability Act may recover the following:

11 (1) economic damages;

12 (2) any pecuniary loss proximately caused by
13 an illegal user's use of a controlled substance; and

14 (3) reasonable attorney fees and costs.

15 C. No damages, including those based on vicarious
16 liability or parental responsibility, that are assessed
17 pursuant to the Drug Trafficker Liability Act shall be payable
18 or claimed under any insurance policy, and no duty to defend
19 or indemnify shall be required for any civil complaint brought
20 pursuant to the Drug Trafficker Liability Act.

21 Section 6. COMPARATIVE NEGLIGENCE. --An action by an
22 illegal user pursuant to the Drug Trafficker Liability Act is
23 governed by the principles of comparative negligence.
24 Negligence shall not be attributed to a plaintiff who is not
25 an illegal user, unless that plaintiff willfully and knowingly

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1 gave an illegal user a controlled substance or money for its
2 purchase.

3 Section 7. ATTACHMENT--PROPERTY SUBJECT TO LEVY.--

4 A. After commencing an action under the Drug
5 Trafficker Liability Act, a plaintiff may seek a writ of
6 attachment by filing a motion supported by an affidavit
7 setting forth specific facts showing all of the following:

8 (1) a description of the injury claimed and a
9 statement that the affiant in good faith believes that the
10 defendant is liable in a stated amount;

11 (2) the defendant is subject to the judicial
12 jurisdiction of the state; and

13 (3) after diligent effort, the plaintiff
14 cannot serve the defendant with process.

15 B. If an attachment action is instituted, a
16 defendant is entitled to an immediate hearing. Attachment may
17 be lifted if the defendant demonstrates that the assets will
18 be available for a potential award or if the defendant posts a
19 bond sufficient to cover a potential award.

20 C. A person against whom a judgment has been
21 rendered under the Drug Trafficker Liability Act is not
22 eligible to exempt any property from process to levy or
23 process to execute on the judgment. Unless the jury, or the
24 court if there is no jury, specifically finds otherwise, the
25 actions for which a person is found liable under the Drug

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1 Trafficker Liability Act are willful and malicious, and the
2 judgment is not subject to discharge under federal bankruptcy
3 law.

4 D. An asset shall not be used to satisfy a
5 judgment under the Drug Trafficker Liability Act if that asset
6 is named in or has been seized for a forfeiture action by the
7 state or the United States before a plaintiff commences an
8 action under that act unless the asset is released after the
9 forfeiture action or is released by the agency that seized the
10 asset.

11 Section 8. ACCRUAL OF CAUSE OF ACTION--TOLLING OF
12 STATUTE OF LIMITATIONS. --

13 A. Except as otherwise provided in this section, a
14 cause of action accrues under the Drug Trafficker Liability
15 Act when a person who may recover has reason to know of the
16 harm and that trafficking in a controlled substance is the
17 cause of the harm.

18 B. The statute of limitations is tolled while the
19 person is incapacitated by the use of a controlled substance
20 to the extent that the person cannot reasonably be expected to
21 seek recovery under the Drug Trafficker Liability Act or as
22 otherwise provided by law.

23 C. A person may bring an action for an injury
24 pursuant to the Drug Trafficker Liability Act within six years
25 of the date the action accrues.

